INDEX

Petition Stating Special and Important Reasons for Writ of Certiorari 1
Statement of the Case 4
The Question Presented 9
Assignments of Error Intended to be Urged 10
Summar yof Argument 11
Argument 13
Conclusion 26

CASES CITED

Hartford Life and Annuity Insurance Co., vs. Unsell 144 U. S. 539; 36 La. Ed. 500 26
Insurance Co., vs. Eggleston, 96 U. S. 572; 24 La. Ed. 845 26
Mortex vs. U. S. 297 Fed. 485-488 22
O'Neill vs. U. S. 32 Fed. (2d. Se.) 313 3-13-26
Railway Mail Assoc. vs. Moore 15 Fed. (2nd Se.) 547 23
Sawyer vs. U. S. (C. C. A.-2) 10 Fed. (2nd Se) 416 16
Thompson vs. Insurance Co. 104 U. S. 260; 26 La. Se. 768 26
Unger vs. U. S. (C. C. A.-10) 65 Fed. (2nd Se.) 946 2-3-13-22
U. S. vs. LaPage (C. C. A.-1) 59 Fed. (2nd Se.) 167-168 2-23-26

OTHER CITATIONS

War Risk Insurance Bulletin No. 1 6
War Risk Ins. Cir. No. 1, Navy Dept. Nov. 15, 1918 14-16-19-23-24
War Risk Ins. Cir. No. 2, Navy Dept. Dec. 19, 1918 25
War Risk Ins. Cir. No. 3, Navy Dept. Jan. 13, 1919 14-19
War Risk Ins. Cir. No. 14, Navy Dept. Oct. 20, 1920 14-19-24
War Risk Ins. Cir., Navy Dept. Nov. 21, 1919 20-25
Treasury Decision No. 48, Sept. 29, 1919 7-10-15-17

Supreme Court of the United States

October Term, 1933

No.....

BERTHA MEYER SMITH,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

WITH SUPPORTING BRIEF

TO REVIEW A JUDGMENT IN CASE No. 7109 REVERSING A JUDGMENT OF THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON GRANTING WAR RISK INSURANCE TO PETITIONER AS BENEFICIARY OF DECEASED SAILOR.

PETITION STATING SPECIAL AND IMPORTANT REASONS FOR WRIT OF CERTIORARI

Comes now your petitioner, Bertha Meyer Smith, appellee in the United States Circuit Court of Appeals for the Ninth Circuit and plaintiff in the United States District Court for Oregon, and petitions this Honorable Supreme Court of the United States to issue a Writ of Certiorari to the said United States Court of Appeals for the Ninth Circuit, to send up the complete record of the case entitled United States of America, appellant, vs. Bertha Meyer Smith, appellee, No. 7109 in order that the United States Supreme Court may review said case for the following special and important reasons:

I.

That the Circuit Court of Appeals for the Ninth Circuit has rendered a decision in this case in conflict with decisions of other Circuit Courts of Appeals, namely, the First and Tenth Circuits (July 31, 1933) on the same matter—that there was money due the insured and premiums should have been deducted.

U. S. vs. LaPage (C. C. A.-1) 59 Fed. (2nd Se.) 167-168.

Unger vs. U. S. (C. C. A.-10) 65 Fed. 2nd Se.) 946.

II.

It has decided an important question of Federal law, which has not been, but should be, settled by this

Court, to-wit: As to whether a contract of insurance on the sailor's application for insurance, unlimited as to time, ended with the enlistment in which it was made, the sailor having a continuous service certificate for more than seven (7) years.

O'Neill vs. U. S. 32 Fed. (2nd Se.) 313.

Unger vs. U. S. (C. C. A.-10) 65 Fed. (2nd Se.) 946.

III.

It has decided an important question of general law in a way probably untenable or in conflict with the weight of authority—no case just like this one having been decided against the claimant, the Government being in a fiduciary relation to the insured sailor and the War Risk Acts and regulations should be interpreted liberally.

IV.

It has decided a Federal question in a way probably in conflict with applicable decisions of this Court—there being no written request of the sailor to cancel his insurance it was the duty of the paymaster to deduct the premium on his insurance in accordance with his written directions to do so.

V.

It has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise

of this Court's power of supervision—what right has a Department of the Government occupying a fiduciary relation to cancel a sailor's contract of insurance without his written request when that Department of the Government had in its possession at all times, sufficient money due the sailor from which to pay the premiums as he had given written directions to deduct?

STATEMENT OF THE CASE

A jury having been waived the case was tried before the District Court upon the following stipulated facts as shown on Pages 53 and 58 R. as follows:

Plaintiff, Bertha Meyer Smith, was the mother of one Elias Melvin Zimmerman, and beneficiary designated in the War Risk Insurance Policy of said Elias Melvin Zimmerman.

That at all times mentioned in the pleadings, the plaintiff was and she now is a citizen of the United States and a resident and inhabitant of the State of Oregon.

Elias Melvin Zimmerman enlisted in the United States Navy on March 18, 1914, at Portland, Oregon, as an apprentice seaman and that he served throughout such enlistment and was honorably discharged therefrom at the expiration thereof on March 17, 1918; that he re-enlisted in the United States Navy on March 18, 1918, and served throughout such enlistment and

received an honorable discharge therefrom on September 15, 1919; that he re-enlisted on September 16, 1919, and served thereafter until the date of his death, June 30, 1921.

That Elias Melvin Zimmerman is holder of Continuous Service Certificate No. 49689.

That on the 3rd day of December, 1917, Elias Melvin Zimmerman made application for and was granted a policy of War Risk Insurance in the amount of $10,000, and that at the time of his application for such insurance, Elias Melvin Zimmerman authorized deductions to be made from his navy pay for the purpose of paying the monthly premiums on his insurance policy in the following words:

> "I authorize the necessary monthly deductions from my pay, or if insufficient, from any deposits with the United States in payment of the premiums as they become due, unless they be otherwise paid."

That deductions were made from the pay of Elias Melvin Zimmerman until the expiration of his first enlistment, by which deductions premiums were paid on his insurance policy to and including the month of March, 1918. That thereafter no further deductions for the payment of insurance premiums were made; no further authority for deductions executed and no further premiums ever paid on such insurance.

That pay was due Elias Melvin Zimmerman for each and every day from and including March 18, 1914, to the official date of his death, June 30, 1921.

That at the time of his discharge on March 17, 1918, and on September 15, 1919, Elias Melvin Zimmerman was paid all the money then due him by the defendant.

That at the time of his death, June 30, 1921, pay was due Elias Melvin Zimmerman, which was later paid to the plaintiff.

War Risk Circular No. 14, S. & A. Circular letter 121-1920, dated October 20, 1920, was issued by the Navy Department, Bureau of Supplies and Accounts, Washington, D. C., on that date.

That in passing upon the question at issue the Court may consider as evidence the depositions and exhibits previously filed in the case.

The following exhibits were admitted in evidence by Stipulation:

Exhibit 1, Bulletin No. 1, War Risk Insurance Bureau.

Exhibit 2, Application for insurance of Elias Melvin Zimmerman, dated December 3, 1917.

Exhibit 3, Treasury Decision No. 33—War Risk Insurance, dated September 20, 1918.

Exhibit 4, Treasury Decision No. 44—War Risk Insurance, dated May 17, 1919.

Exhibit 5, Treasury Decision No. 48—War Risk Insurance, dated September 29, 1919.

Exhibit 6, Letter of Navy Department, dated May 25, 1921.

(Included in Stipulation of facts.)

Exhibit 7, Letter of Navy Department, dated July 8, 1921.

(Included in Stipulation of facts.)

IT WAS FURTHER STIPULATED that a disagreement existed between plaintiff and defendant.

Thereafter the following proceedings were had:

MR. KIMMELL: The record shows there was deduction for the first enlistment for premiums.

COURT: I think the service should be considered as continuous. The question is whether the Government should have deducted the premiums. Of course, payments made to the month after his death would be after the policy had matured. I think you should tender the amount of the premiums, whatever they were.

MR. CROSSLEY: Of course, it is over ten years since he lost his life.

COURT: Yes, but up to the time of his death, when the policy matured, to 1921.

MR. CROSSLEY: June 30, 1921. If your Honor please, I think I would like to add an amendment to our complaint. I think there are five paragraphs and the sixth I would like to add, that plaintiff hereby makes tender of all premiums that may have been due, if any were due, on the 18th day of March, 1918, to the 30th day of June, 1921.

THE COURT: Yes.'

IT WAS FURTHER STIPULATED and AGREED that there was one fact only in controversy, namely; was the War Risk Insurance Policy applied for and obtained by Elias Melvin Zimmerman on December 3, 1917, in force and effect and unterminated on June 30, 1921.

The deposition of Lieutenant Walter Dismukes, taken and filed on behalf of the defendant in Washington, D. C., on December 2, 1929, in addition to the matters stipulated and agreed upon, was in substance as follows:

I am at present in charge of the retainer division, Bureau of Supplies and Accounts, Navy Department, Washington, D. C., and in such capacity have access to the records relating to enlisted men in the United States Navy; that I have searched such records for the purpose of ascertaining what was disclosed by the records of the enlistments of Elias Melvin Zimmerman. The Navy Department records relating to Elias Mel-

vin Zimmerman, disclose that he never made any allotment for War Risk Insurance Premiums other than the authorization for deduction of premiums at the time of his application for insurance.

I further examined the records of the enlisted personnel aboard the United States Ship "Conestoga" with reference to Elias Melvin Zimmerman, and found that the record shows that twelve members of the crew of that ship executed allotments for the payment of premiums on War Risk Insurance, but that no allotment was executed by Zimmerman.

THE QUESTION PRESENTED

The real question presented in this case is whether the War Risk Term insurance policy issued to Elias Melvin Zimmerman on his application dated December 3, 1917, and on which it appears no premiums were paid after the month of March, 1918, was kept in full force and effect during his continuous active service in the United States Navy from March 18, 1914, to June 30, 1921, during two subsequent re-enlistments without a single day out of active service by reason of an authorization unlimited as to time, for deduction of insurance premiums from active service pay executed during an enlistment extending from March 18, 1914 to March 17, 1918, and not renewed during such continuous subsequent enlistments which authorization was never revoked and there was always sufficient

pay due Elias Melvin Zimmerman to pay the premiums on his insurance, he having continuous service certificate No. 49,689 and he had not been discharged from active naval service of the United States at the time of his death.

ASSIGNMENTS OF ERROR INTENDED TO BE URGED

I. In holding that the contract of insurance on the sailor's application for insurance ended with the enlistment in which it was made or any subsequent re-enlistment when the sailor was the holder of a continuous service certificate No. 49, 689.

II. In holding without any evidence to support the same, that the insured sailor, Zimmerman, accepted his full pay knowing it to be such.

III. In holding that the Navy Circular No. 1 of November 15, 1918 and No. 3 of January 13, 1919, and No. 14 of October 20, 1920 and Treasury Decision No. 48 of September 29, 1919 are applicable to and controlling in this case.

IV. In holding that the Court may assume that this sailor was advised that he should give his certified copy of his insurance application to the officer of the pay corps having his account when the sailor's service was active and continuous.

V. In holding that the insured sailor did not treat

his written authorization to deduct premiums in his application for insurance as continuing in subsequent enlistments, there being no written request for cancellation of his policy and the insured being the possessor of a continuous service certificate.

VI. In holding that the insured sailor's War Risk Term insurance was cancelled without his written request, there being money due him at all times from the Government occupying a fiduciary relation to the sailor, from which to deduct the premiums as he had directed in his written application.

VII. In holding to a severely strict construction of the War Risk Insurance law and regulations when they should be construed liberally.

SUMMARY OF ARGUMENT

Your petitioner respectfully urges upon this Honorable Court that a Writ of Certiorari to the United States Circuit Court of Appeals should be issued in this case in order that this Court may review the said Circuit Court of Appeal's decision because of the special and important reasons hereinbefore and hereafter set forth:

(1.) There was always something due Zimmerman from the Government for his active service pay from which to deduct the payments for premium on his insurance authorized in his application without limit as to enlistment.

(2.) That Zimmerman had a continuous service Certificate No. 49689, having served over seven (7) years continuously in the Navy and that not only at the last of each month did he have pay due him enough to pay the premium on his insurance, but that at the time of his death he had more than enough due him to pay all of his premiums which the Government had failed to deduct.

(3.) That the authorization for deduction of premiums from active service did not expire with the enlistment in which it was executed.

(4.) That it was not necessary to have such authorization renewed and the Navy Pay Master had full authority and should have deducted the insurance premiums during the subsequent enlistments.

(5.) That Zimmerman did not understand that there was any law or regulation which would prevent the Government from deducting the premium as he had authorized and that Zimmerman did desire insurance protection subsequent to his first enlistment.

(6.) That Zimmerman did not by any writing or otherwise revoke or cancel his policy of insurance or the authorization which he had given for deduction of premiums on his insurance from his active service pay and that the insurance policy in this case was in full force and effect on the date of the death of Elias Mel-

vin Zimmerman while he was yet in the active service of the Navy on June 30, 1931.

ARGUMENT

ASSIGNMENT OF ERROR No. I

This plaintiff and petitioner contends that the contract of insurance on the sailor's application did not expire with the enlistment in which it was made or his subsequent enlistment for the reasons that:

(1.) The enlistment contract applied to service only, while the contract of insurance, based upon the application therefor, was separate and distinct and made at a different time.

See Page 36 R.

O'Neill vs. U. S. 32 Fed. (2nd Se.) 313.

Unger vs. U. S. (C. C. A.-10) 65 Fed. 2nd Se.) 946.

(2.) There was no limit as to the time the contract of insurance should run stated in the application of the insured, which application was accepted by the Government, and there was no time limit upon the authorization to deduct premiums for the insurance.

Page 36 to 42 R.

(3.) The insured sailor had a continuous service certificate No. 49, 689 and he had at the time of his death been serving for more than seven (7) years in

the navy of the United States from March 18, 1914 to the date of his death June 30, 1931.

(4.) The Government itself did not require a new application for a new contract of insurance upon re-enlistment as is evidenced by the fact that when a sailor was discharged and left the service he could still keep up his insurance.

See 11 War Risk Ins. Circular No. 1 Navy Dept.
Bureau of Supplies and Accounts Dated Nov. 15, 1918.

War Risk Ins. Circular No. 3.
Navy Dept. Bureau of Supplies and Accts.
Dated Jan. 13, 1919.

(5.) Also if a sailor re-enlisted after being out of the service for some time, all he needed to do was to present a certified copy of his insurance application and thus his insurance continued.

Under "Re-enlistment" War Risk Ins. Circular No. 14 Navy Dept. Bureau of Supplies and Accounts Dated Oct. 20, 1920.

ASSIGNMENT OF ERROR No. II

This plaintiff and petitioner contends that the insured sailor did not accept his full pay knowing it to be such for the following reasons:

(1.) That there was no evidence in this case whatever to show that Zimmerman, the insured, knew that he was paid in full either monthly or at the end of his enlistments.

(2.) That Zimmerman's pay varied from time to time since he was making an allotment to his mother, which varied from time to time.

(3.) That any purchases by the insured from the Ship Stores on board ship would be deducted from his pay, and that, too, would make the amount of the pay he himself received vary from time to time.

ASSIGNMENT OF ERROR No. III

This petitioner and plaintiff contends that Circular No. 1 of the Navy Department Bureau of Supplies and Accounts dated November 15, 1918 as amended by Circular No. 3 of January 13, 1919 and Circular No. 14 of October 20, 1920 and Treasury Decision No. 48 were not sufficiently applicable to and controlling in the case at bar to cancel and terminate the insurance of this sailor for the reasons that:

(1.) Circular No. 1 of November 15, 1918 was not in effect and therefore could not apply to the reenlistment of the insured on March 18, 1918.

(2.) Considering this Circular No. 1 of November 15, 1918 to have been in effect on September 15, 1919 when the sailor re-enlisted a second time it stated

that a checkage of insurance premium will continue while the man is in a pay status.

Par. 8 Navy Dept. Circular No. 1 Bureau of Supplies and Accounts of Nov. 15, 1918.

(3.) There was never a written request over Zimmerman's signature to cancel his insurance, and no proof whatever of such request.

(4.) That the discharge spoken of in Circular No. 3 of January 13, 1919 referred particularly to men who left the service as it provided for the first remittance of premium by the insured himself and not through the Paymaster, unless he re-enlisted at a later date, and in the Second Circuit the Court of Appeals sets forth a part of Form 2303 which stated:

"After discharge from the service when your Government pay ceases, you should send check or money order drawn to the Treasurer of the United States at Washington, D. C."

Sawyer vs. U. S. (C. C. A.-2) 10 Fed. (2nd Se.) 416.

(5.) The officer of the pay corps already had the insured's pay account, and if the sailor continued in service as he did, the checkage would be continuous instead of a first checkage by the Paymaster.

(6.) That Treasury, Bureau of War Risk Insurance, Form 2303, containing information relative to

compensation and continuation of War Risk Insurance was intended to be filled out in duplicate in the event a sailor was finally discharged and went out of the service for sometime, and this applied too, to the certified copy of his insurance application, as it will be noted he was to be instructed to forward these papers direct to the Bureau of War Risk Insurance with his first remittance of premium, when the insured was out of active service and out of a pay status, but this did not apply to Zimmerman as he was always on a pay status and was never out of active service for a single day.

See Par. 2 Page 55 R.

See Par. 1 Page 54 and Par 2 Page 55 R.

(7.) That Treasury Decision No. 48 rendered on September 29, 1919 was not in effect on September 16, 1919 when the insured re-enlisted for a third term of service in the Navy, and not being in effect it was not controlling either at the time of his first re-enlistment or at the time of his second re-enlistment just as the Navy Department Circular of November 15, 1918 and January 13, 1919 were not in effect at the time of the insured's first re-enlistment and as contended by the petitioner were not applicable to the case at bar at the time of either re-enlistment on account of the insured's continuous service and being always in a pay status. However, Treasury Decision No. 48 provided that

"authorization of deductions from the insured's pay shall be equivalent of tender." and the Navy Department always had the sailor's written authorization of deduction contained in his application for insurance.

See Par. 1, Page 38 R.

(8.) That War Risk Insurance Circular No. 14 issued by the Navy Department, Bureau of Supplies and Accounts on October 20, 1920 states:

> "The attached War Risk circular letter shall be effective upon receipt thereof except in case of term insurance which is now in effect."

It also stated that:

> "The responsibility for the proper execution of application for Government insurance rests upon commanding officers and commandants."

It also provided that:

> "When term insurance is cancelled or reduced except in conversion (but there is no conversion in this case) a request signed by the insured must be made in duplicate and addressed to the Bureau of War Risk Insurance through the supply officer carrying the insured's pay account."

and there was never any such request signed by the insured sailor. Said War Risk Insurance Circular No. 14 also provided: that upon final discharge "he shall

be instructed to forward Treasury Form 2303 to the Bureau of War Risk Insurance with the first remittance of premium by him," but it will be noted this does not apply to a man like Zimmerman who was continuing actively in the service.

(9.) However, it is to be noted that War Risk Insurance Circular Nos. 1, 3 and 14 of the Navy Department were none of them admitted in evidence by stipulation or in any other way.

See Page 56 R.

ASSIGNMENT OF ERROR No. IV

This petitioner and plaintiff contends that the Court should not assume that the insured was advised that he should give a certified copy of his insurance application to the officer of the pay corps taking up his accounts, which assumption was based upon the presumption of the performance of official duty for the following reasons:

(1.) That the officer of the pay corps no doubt considered, *and rightly so*, that the insured did not come under the provisions of the Navy Department Circular of November 15, 1918 as amended by the Circular of January 13, 1919, since the sailor was in continuous active service, and that checkage of his insurance premiums on term insurance should continue on the payroll while he was in a pay status and this is supported by War Risk Insurance Circular issued by

Navy Department Bureau of Supplies and Accounts on November 21, 1919 wherein it is stated in Paragraph One (1) thereof that:

> "Bureau of War Risk Insurance reports that numerous supply officers are registering Form 6 allotments in payment of premiums on *term insurance*. Attention is called to War Risk Circular No. 1 instruction in which read:
>
> That premium for *term insurance be charged* by checkage on the payroll by the supply officer carrying the pay account of the insured."
>
> *See Opinion of Circuit Court of Appeals Page 97-99 R.*

(2.) That thus the presumption of the performance of official duty is not always a substantial basis for the assumption that certain acts have been done, for it is a well known fact that many duties are not performed through inadvertance, mistake or otherwise.

War Risk Ins. Circular Navy Dept. Dated Dec. 19, 1919.

Par. I War Risk Ins. Circular Navy Dept. Dated Nov. 21, 1919.

ASSIGNMENT OF ERROR No. V

This petitioner and plaintiff contends that the insured sailor having confidence in his written applica-

tion and his Government, did treat his authorization to deduct premiums as continuing during his subsequent enlistments for the reasons that:

(1.) The sailor made his application for insurance and his written authorization to deduct premiums therefor on December 3, 1917 when he knew the time of the enlistment, he was then serving would expire on March 17, 1918, just three and one half months later and so he expected his term insurance to continue in his next enlistments, the premium rate of $6.50 per month being low, and he wished to provide for his mother.

See Page 36 to 41 R.

(2.) The insured never gave any written request whatever over his own signature to revoke his application or to cancel the insurance and there was no evidence whatever of such written request and premiums should have been paid from pay due him.

See Stipulated Facts pages 53 to 58 R.

On July 31, 1933 the Tenth Circuit Court of Appeals held that:

> "Under authority contained in application, not revoked to writing, premiums of War Risk Policy on insured's re-enlistment within 3

months after discharge should have been deducted from pay and paid."

Unger vs. U. S. (C. C. A.-10) 65 Fed. 2nd Se.) 946.

Mortex vs. U. S. 297 Fed. 485-488.

(3.) The sailor having filed his application for insurance with the Government and having authorized in such written application the deduction from his pay of premiums therefor, which application, premium, and contract the Government had accepted, the sailor felt confident that his insurance was continued and particularly since he was in continuous active service with a certificate to that effect and these policies and, the law generally are entitled to the most liberal construction in favor of the soldier (or sailor).

U. S. vs. Cox (C. C. A.-5). 24 Fed. (2nd Se. 799.

(4.) That the sailor being in continuous service during a period of 7 years 3½ months, it was the duty of the officers of the Navy to see that his Insurance was kept alive by the deduction of premiums from his pay as he authorized them to do, or to have advised him that his insurance was lapsing because of failure to pay the premiums, and there is no evidence whatever to show that they did this as the regulations required

them to do, and so the sailor Zimmerman felt satisfied that his insurance was continued.

Railway Mail Assoc. vs. Moore 15 Fed. (2nd Se.) Page 547.

See Par. 3-4-5 War Risk Insurance Circular No. 1 Navy Dept. Dated Nov. 15, 1918

That premiums were not paid on this policy was not the fault of the insured or the beneficiary as it is admitted that the Government had at all times in its possession from the time the policy should have been held to be in effect to the date of the death of the insured, not only money due the insured but sufficient to pay the premiums due on the policy.

Par. 2 Page 55 R.

U. S. vs. LaPage (C. C. A.-1) 59 Fed. (2nd Se.) 167-168.

ASSIGNMENT OF ERROR No. 6

Your petitioner and plaintiff contends that the Circuit Court of appeals erred in holding that the insured sailor's war risk term insurance was cancelled without his written request for the following reasons:

(1.) The regulations provided "that checkage of insurance premium will continue while a man is in a pay status or until the insurance is cancelled by written request over the man's signature forwarded

through the officer of the pay corps carrying his account."

Par. 8 Navy Dept. War Risk Insurance Circular Bureau of Supplies and Accounts. No. 1 Dated Nov. 15, 1918.

Sec. 8, P. 98 R.

(2.) A further and later regulation provided that "when term insurance is cancelled a request signed by the insured must be made in duplicate and addressed to the Bureau of War Risk Insurance carrying his pay account."

See Cancellation in War Risk Ins. Circular No. 14 of Navy Dept. Bureau of Supplies and Accounts Dated Oct. 20, 1920.

ASSIGNMENT OF ERROR No. 7

This petitioner and plaintiff further contends that the United States Circuit Court of Appeals for the Ninth Circuit has followed a severely strict construction of law and regulations instead of construing the law and regulations liberally in favor of the insured so as not to work a forfeiture, annulment or lapse of the insurance policy for the reasons that:

(1). The regulations issued through its War Risk Insurance Circulars, Bureau of Supplies and Accounts, following the sailor's application for insurance and his authorization for the payment of premiums therefor

were too complex and intricate for a sailor to follow and were in fact often misunderstood and improperly carried into effect by the officers themselves.

See War Risk Ins. Circular No. 2 Navy Dept. Bureau of Supplies and Accounts Dated Dec. 19, 1918.

War Risk Ins. Circular Navy Dept. Bureau of Supplies and Accounts Dated Nov. 21, 1919.

(2.) It surely should not be the policy of the Navy Department, Bureau of Supplies and Accounts, to make rules and regulations to break contracts which the sailor had entered into with the Government in good faith and the present decision of the Ninth Circuit Court of Appeals surely lends itself to that proposition, and this should not be the policy of the Courts, particularly since the sailor is in a confidential relation with his Government and in a sense a ward of the Government.

The First Circuit Court of Appeals says:

> "The Government extended to those in the service during the World War every possible benefit and encouragement to protect themselves and their family against want—in case of their death or disability while in the service. The Government *should not stand on narrow techni-*

calities when the good faith of the parties is unquestioned.'

U. S. vs. LaPage (C. C. A.-1) 59 Fed. (2nd Se.) 167.

O'Neill vs. U. S. 32 Fed. (2nd Se.) 313.

(3.) The rule is that Courts do not favor a forfeiture, and when doubts arise as to the proper construction of an insurance contract, that view should be adopted which is most favorable to the insured and will prevent annulment and lapse of his policy.

Insurance Co. vs. Eggleston, 96 U. S. 572; 24 La. Ed. 845.

Thompson vs. Insurance Co. 104 U. S. 260; 26 L. Ed. 768.

Hartford Life and Annuity Insurance Co., vs. Unsell, 144 U. S. 539; 36 La. Ed. 500.

CONCLUSION

Finally, it is in all sincerity, submitted that in justice to this petitioner, the widowed mother of the deceased sailor, and to clear up these special and important questions of War Risk Insurance law and regulations on which there have been conflicting opinions by U. S. Circuit Courts of Appeals and U. S. District Courts and for other reasons mentioned, a Writ of Certiorari should be issued by the United States Su-

preme Court so that this case may be reviewed and a decision rendered by this Court settling these important questions.

Respectfully submitted,

JAMES J. CROSSLEY,
Attorney for Petitioner.